

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 24 2002

OFFICE OF
MANAGING DIRECTOR

Lauren A. Colby, Esq.
Post Office Box 113
Frederick, Maryland 21705-0113

Re: Horvath Broadcasting, L.L.C.
Station WZUM-AM, Carnegie, Pennsylvania
Fee Control No. 00000RROG-02-060
Bill No. 02MMB0075

Dear Mr. Colby:

This is in response to your request dated July 9, 2002, filed on behalf of Horvath Broadcasting, L.L.C. (Horvath) that the Commission's Office of Managing Director reconsider **its** decision denying Horvath's request for a waiver of the late charge penalty for late payment of the fiscal year (FY) 2001 regulatory fee.¹ Our records reflect that **you** have paid the FY 2001 regulatory fee of \$1,550.00, but not the \$387.50 **late** charge penalty for late payment of the regulatory fee.

In your request, you state that Horvath "was never sent any notice from the FCC advising of the need to pay a regulatory fee" and therefore "was not aware that any fee was payable." You assert that "[t]he FCC has some obligation to advise its licensees when fees are due." You claim that unlike Horvath, you believe "the vast majority of the licensees did, in fact, receive a notice from the FCC advising them to pay the fee." You also assert that Station WZUM-AM is a very small AM broadcast station that is struggling financially.

The Commission's rules are clear that licensees such as Horvath are required to pay to the Commission an annual regulatory fee in a timely manner. *See* 47 C.F.R. §1.1157; *see also Assessment and Collection of Regulatory Fees for Fiscal Year 2001. Report and Order*, 16 FCC Rcd 13,525 (2001) (*2001 Report and Order*); 47 U.S.C. §159. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives **the** fee payment no later than the final date on which regulatory fees are due for the year. *See* 47 C.F.R. §1.1157. The Commission issued a public notice announcing the date on which the FY 2001 regulatory fees were **due** (i.e., September 26, 2001). *See Public Notice*, Extension of Fiscal Year 2001 Regulatory Fee Filing Window, 2001 WL I078406 (dated September 17, 2001) (*Sept. 17 Public Notice*). As a Commission licensee, Horvath is charged with the responsibility to familiarize itself with

¹ Letter from Mark A. Reger, Chief Financial Officer, FCC, to Lauren A. Colby, Esq. (June 18, 2002).

the Commission's rules and requirements. Therefore, Horvath's lack of familiarity with the Commission's rules governing and public notices concerning regulatory fee payments does not mitigate or excuse Horvath's failure to pay the FY 2001 regulatory fee in a timely manner. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances." *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375,2378 (1979), *citing Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

Licensees receive notice of the filing date for the regulatory fee either in the Commission's annual Report and Order revising the Schedule of Regulatory Fees (as published in the Federal Register),² or by order or public notice in the Federal Register pursuant to authority delegated to the Managing Director.³ The Commission also issues public notices and news releases announcing the filing dates for regulatory fees, which are made available to the public at the Commission's headquarters. The Commission has followed these procedures for announcing the regulatory fee filing date since the inception of the fee program in 1994. Further, for the past several years, including FY 2001, the Commission has posted public notices announcing the regulatory fee filing date on its Internet website and mailed a copy of a public notice relating to the FY regulatory fee (along with a copy of the radio station call sign listings and the respective regulatory fee amounts to be paid) to all AM and FM radio station licensees listed in the Commission's Media Services database.⁴ We note that neither the Communications Act nor the Commission's rules require the Commission to issue individual notices advising its licensees of the requirement to pay regulatory fees.

Horvath has been the licensee of Station WZUM-AM since 1999 (after having been assigned the station from Michael Horvath) and therefore should be familiar with the Commission's rules and procedures regarding the payment of regulatory fees. Indeed, Horvath apparently is aware of these rules and procedures, including the fact that it is

² In fact, the original filing date for the FY 2001 regulatory fee at issue here was announced in the **2001 Report and Order**, which was published in the Federal Register at 66 Fed. Reg. 36,177 (2001).

³ See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2000, Notice*, 65 Fed. Reg. 42,697 (2000); *Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Order*, 64 Fed. Reg. 42,854 (1999).

⁴ It is possible that not all of the FY 2001 regulatory fee notifications that were mailed by the Commission to its **AM and FM** radio station licensees as listed in its database were received by the intended recipient due to a variety of reasons, including incorrect addresses listed in the Commission's database and errors in mail service. The Commission posted the **Sept. 17 Public Notice** (extending the **due** date for filing the FY 2001 regulatory fee until September 26, 2001) on its Internet website, but did not **issue** individual notices of the extension of the regulatory fee filing date to all the licensees in its database due to time constraints,

required to pay regulatory fees for Station WZUM-AM ~~in~~ a timely ~~manner~~ or be subject to a late charge penalty for late payment thereof: Horvath paid regulatory *fees* for FYs 1999 and 2000, as well as a late charge penalty for late payment of the FY 2000 regulatory fee. In addition, Michael Horvath, as the licensee of Station WZUM-AM, paid the regulatory fee for the station for FY 1998.

Further, your unsupported claim that Horvath is “financially struggling” provides insufficient grounds for granting your request for relief. In order to qualify for waiver on grounds of financial hardship, licensees must present a compelling case of financial hardship. *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon.*, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting

information such ~~as~~ a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. 10 FCC Rcd at 12761-12762.

In the absence of such documentation, or other relevant showing, **you** have not established hardship.

Our records show that Bill No. 02MMB0075 was paid on August 9, 2002.

If you have **any** questions concerning this matter, please contact the Revenue & Receivables Operation Group at (202) 418-1995.

Sincerely,



for Mark A. Reger
Chief Financial Officer

copy to:

Michael Horvath
Horvath Broadcasting, L.L.C.
Post Office Box 27
Monroeville, PA 15146

00000 RRG -02-060

LAUREN A. COLBY

ATTORNEY AT LAW

POST OFFICE BOX 113

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July 9, 2002

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lac@lcolby.com

VIA FACSIMILE

Mr. ~~Mark~~ A. Reger, Chief Financial Officer
Office of Managing Director
F.C.C.
The Portals
445 Twelfth Street S.W.
Washington, D.C. 20554

Dear Mr. Reger:

I have your letter of June 18, 2002. Please be advised that I **am** a "Mr." not a "Ms.".

Your letter indicates that **you** do not understand the situation. I did not **read** anything which made me **aware** of the need to file **or** pay a regulatory fee. I **am** simply an attorney; I **am** not a licensee; and I do not pay regulatory fees, nor **am** I required to do **so**.

What happened is that my client, Horvath Broadcasting, L.L.C., was never sent any notice **from** the FCC advising of the need to pay a regulatory fee. Therefore, Michael Horvath, the president of Horvath Broadcasting, L.L.C., was not aware that any fee was payable. That being **so**, he did not timely tender the fee.

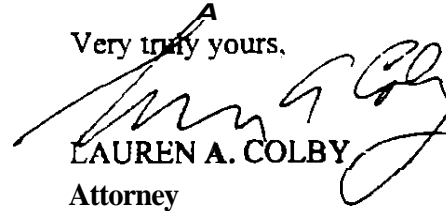
However, **as soon as** he became aware that a fee was due, he called my office **and** we calculated the amount of the fee. He **then made** arrangements to promptly pay the fee.

The FCC has some obligation to advise its licensees when fees are due. **On** information and belief, the vast majority of the licensees did, in fact, receive a notice **from** the FCC advising them to pay the fee. Through **some** error on the FCC's part, the notice was not mailed to Horvath Broadcasting, L.L.C. That is not the fault of Horvath Broadcasting, L.L.C. **and**, under **these** circumstances, it is unjust to exact a late penalty.

Mr. Reger
July 9, 2002
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Therefore, I respectfully request you to revoke your letter of June 18, 2002, and waive this fee. In that regard, I would add that Horvath Broadcasting, L.L.C., is the licensee of a very small AM broadcast station. The company is financially struggling and should not be assessed a late charge where, as here, it was not the fault of the company that the payment was late.

Very truly yours,



LAUREN A. COLBY
Attorney

LAC/tdm

cc: Mr. Michael Horvath



Payment Search Detail

| | | | | | | | | | | | | | | | |
|--------------------|--|------------------|--|--------------|--|--------------------------|--|-----------------------------|--|-------------------|--|---------------|--|----------------|--|
| Fee Control Number | | 0208128835315001 | | Payer Name | | HORVAITH BROADCASTING LL | | Payment Amt | | \$387.50 | | Overage Amt | | R | |
| Payer info | | End Check info | | Changer info | | Acct info | | Also Show JV'd transactions | | Move to Unapplied | | FCC Code info | | Applicant info | |
| Treasury info | | Modify Payment | | Close | | | | | | | | | | | |

| Sequence | Quantity | Payment Type Code | Payment Amount | Trans Code | Call Sign | Other Id | Treasury Symbol |
|----------|----------|-------------------|----------------|------------|------------|----------|-----------------|
| 1 | 1 | 0199 | \$387.50 | PMT | 02MMB00875 | | 27X6D88 |

First Screen

Novell-derived Application... FCC Collection System ...





Payment Search Detail



| | Payment Amt | Overage Amt | Remittance ID | Payment Type | Date Rcvd |
|--------|-------------|-------------|---------------|--------------|------------|
| ING LI | \$387.50 | \$0.00 | 2429 | CHECK | 08/09/2002 |

Credit Card Info

Payor Info

Fed Check Info

Changer Info

Acct Info

☒ Also Show JV'd transactions

| Sequence | Quantity | Payment Type Code | Payment Amount | Trans Code | CallSign Other Id | Treasury Symbol |
|----------|----------|-------------------|----------------|------------|-------------------|-----------------|
| 1 | 1 | 0199 | \$387.50 | PMT | 02MMB0875 | 27X6088 |

More to Unapplied

FCC Code Info

Applicant Info

Treasury Info

Modify Payment

Close

Print Screen



Novell-delivered Applicati...

FCC Collection System ...